safe harbor.[16] The Telecommunications Act of 1996 subsequently defined affiliates as entities owned 10% or more by the parent. 47 U.S.C. § 3(1).

ALTS does not propose that ILECs be limited to only a 10% ownership of their in-region affiliates. However, the HAI Broadband Paper proposes that outside ownership be "sufficient to trigger SEC financial disclosure rules" (at 50), and CLECs supporting the separate subsidiary approach have argued against majority incumbent ownership. [17]

2. ILEC Provisioning of UNEs to Affiliates

If in-region affiliates are not required to have appreciable outside ownership, there will be obviously a fundamental problem concerning the pricing of unbundled network elements provided by an ILEC to its affiliate. In the presence of price caps and the absence of appreciable outside ownership in a data affiliate, an incumbent's charges to its affiliate are simply a wash transaction. Indeed, to the extent that charging its own affiliate unreasonably high prices helps justify applying the same rates to unaffiliated providers (which it clearly should not), the incumbent has yet an additional incentive to make UNEs

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[16] Motion of the United States for a Declaratory Ruling Regarding the Receipts of Royalties on Third-Party Sales of Telecommunications Products at 8.

[17] See n.13, supra, noting COVAD's proposal that ILECs "would certainly not own a majority interest."

as expensive as possible.[18] Nor would unreasonable rates be automatically detected in the affiliates charges, given the Advanced Wireline Services NPRM's proposal that affiliates be freed from the cost support requirements of dominant carrier regulation (at ¶ 100).

There is no easy solution to this dilemma absent appreciable outside ownership. However, there are at least three minimal prophylactic measures that can be taken:

1) In-region affiliates should be required to raise capital in the same fashion as ordinary CLECs -- The Advanced Wireline Services NPRM proposes to prohibit in-region affiliates from issuing debt using the assets of the ILEC as security, but it imposes no limit on the amount of equity an ILEC can use to fund the affiliate. This capitalization "loophole" permits an ILEC to shovel as much cash as it pleases into its affiliate, charge unreasonably high rates to its affiliates and non-affiliates, and replenish the affiliate's cash level as needed.

The Commission could reduce the attractiveness of this tactic by limiting ILECs' initial cash infusions to the level of venture capital ordinarily provided to CLEC start-ups, thus requiring the in-region affiliate to obtain additional capital

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[18] See HAI Broadband Paper: "The Commission needs to be concerned with strategic or anticompetitive pricing on the part of the ILEC designed to reduce broadband competition" (at 56).

from the high yield bond market, just like other CLECs. By placing in-region affiliates in the same cash-flow position as its competitors, the attractiveness of unreasonably priced "wash" transactions would be reduced.[19]

2) Pre-implementation demonstration by affiliates that UNEs are being at provided at TELRIC -- As the HAI Broadband Paper concludes: "The bottom line is that pricing loops at economic cost is an essential competitive safeguard" (at 58). Because the Commission and virtually all the states have already concluded that UNEs must be made available at forward-looking economic costs, one way to minimize the incentive to over-price the UNEs provided to an affiliate by an incumbent is to require that it: (1) obtain UNEs through an approved tariff or interconnection agreement; or (2) demonstrate that the UNEs it acquires from the incumbent comply fully with the statutory standard by publicly filing appropriate cost evidence thirty days prior to the commencement of provisioning.

3) Pre-implementation imputation requirement for all affiliate services -- If an affiliate does acquire overpriced

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[19] These requirements are similar to the capitalization plans (known as "cap" plans) which the Commission required ILECs to file in advance concerning their creation and supplemental funding of unregulated sales affiliates that could receive commission payments for Centrex sales. In the Matter of American Information Technologies Corp., BellSouth, NYNEX; Interim Capitalization Plans for the Furnishing of Customer Premises Equipment and Enhanced Services ("Centrex Sales Agent Order"), 98 F.C.C.2d 943 (1984).

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UNEs from its parent, that fact could possibly be detected by requiring the affiliate to show that its prices covers the costs of all its inputs, including UNEs purchased from its parent. The burden of proof would be on the affiliate to show that any failure to recover its full costs was not the result of overpriced UNEs. Once the affiliate's prices had met the imputation test, the affiliate would be free to reduce those prices in the future only upon an additional prior showing that it remained in compliance with the imputation requirement. In this regard, the quickest way to open local markets for broadband competition would be to require ILECs to make the prerequisite unbundled services available before they are allowed to expand their own xDSL offerings.

3. Terms and Conditions

Incumbent affiliates will likely provision higher volumes of high speed loop services than their competitors, at least at first. Accordingly, the Commission will need to determine whether differences between the operational support systems ("OSS") and other unbundled network elements used by an affiliate, and those used by its competitors, are the result of discrimination or the legitimate result of differences in volumes.

Issues of discrimination are particularly difficult to resolve where appreciable volume differences exist, or if unique provisioning is involved. Nor does the existence of "modern

operations system" mitigate this risk, as the HAI Broadband Paper points out: "There are still ample opportunities to discriminate, both 'upstream' of these systems, by deploying them in a pattern that favors areas where ILEC facilities are concentrated, and 'downstream' of these systems in maintenance and repair activities conducted by ILEC craft personnel" (at 41-42). Accordingly, affiliates should bear a high burden of proof when attempting to demonstrate that special terms and conditions are justified by volume or non-standard provisioning.

In particular, the Commission should order that collocation by an affiliate be only physical, not virtual. As the Advanced Wireline Services NPRM suggests, policing of virtual collocation arrangements for an affiliate would be immensely difficult, given the numerous and virtually undetectable opportunities for discrimination in the collocation context (at ¶ 101). In the event virtual collocation is made available to in-region affiliates, contrary to ALTS' recommendation, such virtual collocation should first be made publicly available to all other competitors for at least 30 days prior to the time when it could first be ordered by the affiliate.

Finally, the Commission should rule as a general matter that the rates, terms and conditions for any and all transactions between the affiliate and incumbent must either be tariffed, or contained in an approved interconnection agreement, at least 60

days prior to any actual transaction between the affiliate and its parent.

B. Transfers Between an ILEC and Its Affiliate

As noted above, the Commission's fundamental assumption should be that ILEC-affiliate transactions or transfers are not allowed except via an approved tariff or interconnection agreement. To the extent the Commission does approve any transfers outside the context of a tariff or agreement, the potential transfer should first be announced and made available to the affiliate's competitors at least 30 days prior to the affiliate's utilization.

Before examining specific ILEC-affiliate transfer issues, ALTS repeats its view that section 251(h) is a flat declaration that transfers to an affiliate convert the affiliate into a successor fully bound by section 251(c). Nothing in the language of section 251(h) limits its application only to bottleneck facilities of the incumbent, nor is there any de minimis language. Given the highly detailed approach of section 251, the absence of any such caveats is a telling demonstration that none exist as a matter of law.

In the event the Commission does decide to permit any transfers about the tariff mechanism, at a minimum the incumbent should be required to offer such transfers on non-discriminatory

terms to all competitors. Quite obviously, there would be no harm to the incumbent from such a rule, since it would assure it of the greatest possible income. Furthermore, it would mitigate various risks, such as efforts by the affiliate to obtain, for example, the incumbent's brand name in an effort to flash-cut the embedded base of customers to its own service.[20]

Strictly as a policy matter, ALTS describes below the minimum restrictions on transfers that might be needed to protect the public interest:

1) Approval of a compliance plan - As noted above in regards to insuring reasonable UNE prices, ALTS proposes that any tariff and interconnection agreements used by an affiliate should first be available to non-affiliated at least 30 days prior to the affiliate's utilization. This period mitigates the "advance warning" that an affiliate is likely to enjoy, and permit competitors to review any tariffs and agreements for their compliance with applicable regulatory requirements.[21] This same philosophy requires that an affiliate obtain advance approval of a compliance plan detailing its course of interaction with its

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[20] See Centrex Sales Agent Order at ¶ 22: "a serious concern is raised by the fact that Ameritech operating companies transferred existing Centrex service accounts to their subsidiaries without providing third parties the same opportunity."

[21] No distinction should be made between "data" and "voice" services in the compliance plan.

owner prior to commencing any operation.

2) Transfer of Capital -- As noted above in connection with assuring reasonable UNE prices, affiliates should be required to obtain capital in a manner similar to CLECs. Accordingly, the compliance plan filed by affiliates should detail the level of affiliate financial support (which should be limited to the level of analogous venture capital), and be required to file and support any changes to that plan if additional cash infusions are needed.[22]

3) Transfer of Strategic Information - By strategic information, ALTS means any valuable information generated by the incumbent that is not specifically referenced elsewhere. This would include vendor preferences, network deployment strategies, CPNI, etc. This information could well prove critical, as in the case of Next Generation Digital Loop Carrier ("DLC") systems that the incumbent will select, which could easily enhance -- or eliminate -- the ability of DSL competitors to operate over such systems.

Because the transfer of such information is so hard to police, ALTS believes this is one of the basic reasons why in-

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[22] See, e.g., the capitalization plans required in connection with the creation of unregulated Centrex sales agents cited above in n. 16.

region affiliates constitutes a poor policy choice. To the extent that current limits do exist -- such as CPNI and network interface disclosure requirements -- ALTS believes these need to be reviewed and enhanced. For example, currently CPNI limits do not appear to apply clearly to an in-region affiliate. Similarly, network interface disclosure requirements should be made more granular (for example, they should clearly include any policies on electromagnetic interference from various DSL technologies in the loop plant), and be issued further in advance.[23]

4) Transfer of Loop Inventory Information -- The availability of data-capable loops is an important strategic factor in successfully entering the high speed loop market. Because loops not exceeding a certain length and without loading coils or bridge taps, are required in order to provision high-speed loop services, knowledge about the location of these data-capable loops is extremely valuable to potential entrants in this market. The Commission should insure that the affiliate does not have special access to this information, and that CLECs have the same access as provided to the affiliate (one way of accomplishing this is to define such information as a UNE; see Part III.B.2 infra). There should also be specified and

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[23] See Centrex Sales Agent Order at ¶ 17: "The network information disclosure rules require that all information about central office equipment availability which is made known to a carrier subsidiary must also be made known to third parties."

effective punishments the Commission could apply in the event violations occur.

5) Transfers of Assets -- As noted above, any asset transfer converts an in-region affiliate into a successor of the incumbent under section 251(h). Consequently, ALTS offers its views about those transfers that should not cause affiliates to be treated as successors strictly as a matter of policy. The HAI Broadband Paper sets out a basic rule: " ... the parent should retain all the functionality required to provide unbundled broadband elements to the competitors of the subsidiary" (at 52).

First, ¶ 105 requests comments whether an "affiliate [that] acquires facilities on its own, and not by transfer from the incumbent LEC" should "not be deemed an assign?" As discussed above in connection with the legal discussion of section 251(h), there is no meaningful distinction between an outright transfer of assets to an affiliate, or the acquisition of facilities by the affiliate.

All incumbent facilities require augmentation or replacement as a result of technological progress, or simply wear and tear. Permitting an affiliate to escape the requirements of section 251(c) by "acquiring" assets that are part of the ordinary evolution of the network would gut the core the of the Act, while protecting no legitimate policy. No such "Get out of jail free card" has ever existed in the Act. Consider the implementation

of long distance technology after World War II. No one seriously contends that the Bell System could have escaped dominant carrier regulation simply by having those assets acquired by an affiliate. However, this is the effective legal premise of the Advanced Wireline Services NPRM.

Bringing the example closer to home, Next Generation Digital Loop Carrier systems will likely enable provisioning of DSL services over digital loop carrier systems. There is no logic to permitting the affiliate to purchase and install such systems, and thereby acquire an effective monopoly over 30% of the loops in America. While the affiliate is free to install its own version of this equipment, the Commission must still require the incumbent to acquire and install all elements of the local exchange network that are essential to the competitive provisioning of broadband services (HAI Broadband Paper at 47).[24]

Concerning the de minimis transfer exemption for network elements used to provide advanced services proposed in the Advanced Wireline Services Order, ALTS wishes to point out there is no pragmatic need for any such device, even if it were legal (at ¶¶ 106-109). ILECs such as Ameritech contend they have always been free to purchase these assets and place them in affiliates, so they obviously need no relief. Other ILECs have

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[24] The fact that new technology can create or continue monopoly power is also well illustrated by DOJ's current lawsuit against Microsoft.

chosen to place such equipment in the incumbent knowing that under section 251(h) a transfer of these assets triggers successorship. Consequently, there is no need as a policy matter for the Commission to attempt to craft a de minimis exemption of questionable legality.

In the event the Commission were to differ with ALTS' views and create such a device, it certainly must permit such equipment to be provided to all parties and not just its affiliate (Advanced Wireline Services Order at ¶ 111). There is no burden whatsoever in imposing such a requirement, inasmuch as the incumbent would be assured of receiving the highest possible value for such equipment.

6) Transfer of Personnel -- Personnel transfers create one of the strongest discriminatory opportunities for incumbents and their transfers.[25] The requirements of separate officers, directors and employees is effectively meaningless if the incumbent is free to churn its personnel through the affiliate with impunity. Incumbents should be required to staff affiliates through outside hires, just like CLECs.

7) Transfers of Brand Names -- The Advanced Wireline Services Order appears to assume that loops are the only monopoly

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[25] See HAI Broadband Paper: " ... one of the most valuable preferences that the parent can bestow on the subsidiary is human capital" (at 52).

facilities in the hands of the incumbent (see, e.g., ¶ 107: " ... We tentatively conclude that any transfer of local loops from an incumbent LEC to an advanced services affiliate would make that affiliate an assign of the incumbent LEC and subject to section 251(c) with respect to those loops." With all due respect, the power of more than one hundred years of incumbency is hardly limited to 23 gauge copper loops. Brand names are powerful, and the Bell brands are among the strongest in America. Affiliates should be prohibited from marketing via incumbent brand names.[26]

8) Transfers of Intangible Property -- Any transfers of intangible assets of the incumbent, such as software, copyrights, etc., such be made available to all purchasers on a non-discriminatory basis. This maximizes income to the incumbent while insuring that any "bottleneck" intangible asserts are made fully available to all competitors.

C. Resale

The Advanced Wireline Services Order proposes forbearance

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[26] ALTS supports the Petition for Declaratory Ruling Or, In the Alternative, For Rulemaking on Defining Certain Incumbent LEC Affiliates as Successors, Assigns, or Comparable Carriers Under Section 251(h) of the Communications Act, CC No. 98-39, filed March 23, 1998, by CompTel, FCCA, and SCCA. The petition seeks a rule "establishing a rebuttable presumption that an ILEC affiliate that provides wireline local exchange or exchange access service within the ILEC's service area under the same or a similar brand name is a 'comparable' carrier under Section 251(h)(2)" (Petition at p. 2).

from the resale of high speed loop services provisioned via in-region affiliates predicated on competitors' asserted ability to install their own electronics (such as "DSLAMs") in central offices and remote pedestals, even though NTIA has concluded that the resale requirement should continue to be applied in such a situation (NTIA ex parte letter filed July 17, 1998). Because the existence of competitors using data loops and collocation space provides the best demonstration that competitors are actually being supported, the Commission should conclude it is desirable to limit forbearance from resale to only those serving areas where a certain level of competitive broadband loops are being made available.[27] Such a requirement might motivate the incumbents to cooperate, at least initially, in the matter of efficient collocation and installation of appropriate CLEC equipment.

D. Price Squeezes

One of the most disturbing aspects of the Advanced Wireline Services Order is its inquiry as to whether: "competing information service providers (such as, for example Internet service providers) will have the ability to offer service to

[27] The NYPSC has imposed an analogous limitation on the availability of UNE-P in certain office for similar policy reasons.

customers of the advanced services affiliate. Could the advanced services affiliate and the incumbent LEC act in concert to engage in a price squeeze on unaffiliated information providers?" (at ¶ 102)).

The answer is obviously "Yes!" The HAI Broadband Paper explains: "The Congress recognized the danger in allowing the BOCs to provide services in competition with interLATA carriers and required strict compliance with a checklist of items prior to entering the interLATA market. ILEC provision of broadband service presents a similar problem. Therefore, the Commission is proposing for broadband services a market model that the Congress determined was too risky for long distance" (at 35). And as NorthPoint pointed out concerning GTE's ADSL filing, the incumbents have failed to show that their DSL rates are consistent with the prices charged by the ILECs for components of this service that are needed by potential competitors (NorthPoint Petition to Reject filed May 22, 1998, at 2):

> "The only basis for assessing the costs of GTE's retail DSL service is to carefully examine the cost components applicable to the provision of DSL service. These components include, among other things, the cost of an unbundled loop and cross-connect, the costs of the equipment and transport required to provide DSL, the cost of necessary collocation, and allocated overhead costs."
>
> "In addition to recovering the costs of an unbundled digital loop, however, GTE's retail ADSL rates must be high enough to recover several other significant cost components faced by any DSL service provider. For example, as set forth in the GTE ADSL tariff, GTE's planned ADSL services requires

> that ADSL equipment be placed on the central office end of an existing local loop, that modifications be made to the inside wiring, and that the traffic be delivered to an aggregation point designated by GTE."

The ability of protesting parties to bring the Commission's attention to such predatory behavior is also severely limited in the case of the current DSL tariffs filed by the ILECs, by their refusal to provide the cost data needed to reveal such activity (see BellSouth's letter dated August 18, 1998, providing only redacted cost support for Transmittal No. 476).

Additional anti-competitive threats are also raised by the absence of any demonstration from ILECs filing DSL tariffs that: (1) the unbundled components of their DSL service constituting network elements are actually being made available to competitors (see GTE ADSL ODI Order at ¶ 19); (2) they will make their DSL service available for resale pursuant to section 251(c)(4) as required by the Advanced Wireline Services Order (id. at ¶ 19: "We note that, by using its network to provide DSL service, GTE is subject to the section 251 obligations .... DSL services offered by ILECs are subject to the resale requirements of section 251(c)(4)"); and, (3) components of the ILECs' DSL service are made available to ISPs pursuant to Computer III. In the absence of such demonstrations, the DSL tariffs should be rejected.

Beyond the potential price squeeze for ISPs, however, is the

disturbing fact that the potential price squeeze for advanced wireline service CLEC competitors is every bit as great, but goes totally unmentioned in the Advanced Wireline Services Order! Perhaps this was an oversight, but ALTS wishes to now emphasize that the price squeeze is just as great for CLECs as for ISPs (if not greater), and requires that the Commission demand adequate cost support for all the reasons pointed out by NorthPoint.

E. Sunset

The Advanced Wireline Services Order's suggestion that in-region affiliate requirements could sunset in a time frame similar to that specified for section 272 simply underscores the error in relying upon that Order (at ¶ 99). Once again, section 272 reflects Congress judgment about the nature and duration of requirements in an environment where an RBOC has already complied with the vigorous requirements of section 271.

Section 272 thus provides no guidance whatever as to the necessary time limits for in-region affiliates absent section 271 compliance. Accordingly, ALTS proposes that no sunset provisions be adopted at this time.

F. The Commission Needs to Insure that its Interpretation of Section 272 Does Not Create an "Open Door" for the Incumbents to Escape Section 251(c).

The Commission must take particular care not to take precipitous action at this time that would potentially limit its ability to address these concerns. If the Commission were to

issue a legal interpretation of section 272 holding that section 272 itself authorizes the incumbents to implement in-region data affiliates, the incumbents might well start implementing their in-region affiliates without complying with, or even acknowledging, any of the many pro-competitive matters (such as cageless collocation, data-ready loops, etc.) Which the Commission appears to believe should accompany the creation of such an affiliate (and which NTIA believes should precede the creation of such an affiliate). Accordingly, the Commission in its ultimate order needs to take care not to craft an interpretation of section 272 which precludes it from later policing or correcting the incumbents in the event they choose an implementation approach -- particularly, an anticompetitive approach -- that the Commission never intended.

G. Enforcement of Rules

The creation of rules for in-region affiliates based on the above policy discussions would make it unnecessary to explore the legal dimensions of the Commission's authority. But the creation of rules, whether in the context of an in-region affiliate or regarding pro-competitive requirements that exist whether or not the affiliate option is chosen (see Part III, infra), is utterly meaningless unless enforced. As explained in the HAI Broadband Paper, the history of rule enforcement is a painful trail of waiver requests, confusion, and naked defiance (at 67-69). Effective competition needs consistent rule enforcement via

effective (i.e., ILEC behavior-altering) agency-enforced penalties. Such penalties could include further divestiture and quarantines on any offers of broadband services from the incumbent or its affiliate (id. at 67-69).

In addition, the Commission could advance deployment of advanced wireline services, while minimizing its own regulatory involvement, by permitting CLECs to include self-enforcement provisions in their interconnection agreements with ILECs. Almost two years ago in a petition for reconsideration of the Local Competition Order, ALTS asked the Commission to rule that it is a violation of the statutory duty to negotiate in good faith for an incumbent to refuse to be subject to reasonable commercial enforcement mechanisms (ALTS Petition for Reconsideration filed September 30, 1996, at 23-29).[28] If the Commission is unwilling to establish that principle by rule here, it ought, at the very least, in this proceeding find that new entrants have the right to include enforcement provisions (including incident-based self-executing remedies) in their interconnection agreements that employ any quantitative models and enforcement procedures established by any regulatory body, and also the right to negotiate any other models or procedures that will satisfy the needs of the carriers.

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[28] See also ALTS' comments filed May 16, 1996, at 9, 27: "There is nothing novel about the notion that a commercial agreement should contain enforcement mechanisms which can make judicial enforcement less likely."

A prominent example of the kind of linkage needed between performance measurements and remedies is the agreement between Cablevision Lightpath and Bell Atlantic in New York. Cablevision Lightpath negotiated an interconnection agreement containing sets of CLEC-specific, incident-based performance measurements that help ensure the timely and accurate provisioning of interconnection services essential to facilities-based CLECs through meaningful self-executing penalties for non-performance.[29] The New York PSC recently emphasized that this linkage of measurements and effective remedies are an essential element in any RBOCs' compliance with the requirements for in-region long distance entry under Section 271: "Such standards and remedies will continue to be offered by Bell Atlantic-NY in subsequent negotiations with those CLECs upon expiration of the existing agreements and similarly will be negotiated in good faith with other CLECs who request negotiation of such terms and conditions."[30]

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[29] See the portion of the Cablevision Lightpath agreement appended to these comments (Attachment A). It is also significant that the Connecticut DPUC recently adopted a similar set of incident-based performance standards proposed by Cablevision Lightpath (Docket No. 97-04-23; Attachment B).

[30] In the Matter of Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. 97-C-0271 (issued April 6, 1998)

III. MEASURES TO PROTECT BROADBAND COMPETITION.

ALTS supports the adoption of national minimum requirements designed to encourage the deployment of broadband services like DSL by strengthening competitors' access to bottleneck facilities (Advanced Wireline Services Order at ¶ 123-124). The HAI Broadband Paper explains that: "There is a need for national standards to describe the interfaces where the CLECs gain access to the ILEC network, whether on an end-to-end or unbundled basis" (at 90).

As a preliminary matter, ALTS wishes to emphasize that the "national rules" its seeks are somewhat different from the approach originally adopted by the Commission in its Local Competition Order, which are now before the Supreme Court. First, ALTS is not asking the Commission to interfere with the pricing authority of the states, which is one of the issues at the Supreme Court. Second, much, if not all of the proposal urged here by ALTS reflects or is founded upon concepts already adopted by or under consideration in the states. Third, these rules are targeted at fostering competition in advanced wireline services.

And even though the "national rules" sought here by ALTS are firmly grounded on full Federal-state cooperation, ALTS also appreciates that neither the Commission nor the states wish to adjudicate every technical detail in such a complex and rapidly changing field. Most of the technical problems addressed in

these comments are intended to familiarize the Commission and the parties with the kinds of issues that need resolution, rather than to seek specific rulings from the Commission. Many of these technical issues have already been resolved between CLECs and ILECs on an individual basis, and such arrangements should be used as a preliminary platform for national standards to help insure that broadband competition is not artificially "held up" by an asserted lack of standards.

With this preliminary understanding, ALTS does believe there are certain concrete "institutional tools" whereby the Commission can address these issues, including:

1) States should have the authority to define additional UNEs that are combinations of existing and new UNEs. Several ILECs refuse to implement requests for UNEs that function in combination on the ground that the Eighth Circuit's Iowa Utilities decision obligates CLECs to combine such elements themselves. While the Supreme Court will likely address this claim, the simplest way to cure the problem is to permit states to designate certain combinations of UNEs as a single UNE that must be provided intact by ILECs.

2) As proposed by NTIA: "if (1) a state commission has ordered a ILEC to provide a particular collocation arrangement or (2) an ILEC has voluntarily offered to provide such an arrangement, there would be a rebuttable presumption that it would be technically feasible for ILECs in any other part of the country to make available the same arrangement" (NTIA ex parte dated July 17, 1998).

3) ILECs should be obligated to negotiate in good faith pursuant to section 251(c)(1) "self-enforcing" mechanisms, including targeted performance measurements and penalties, that will help implement ILEC compliance with their broadband obligations.

4) ILECs seeking to create an in-region affiliate should first obtain approval from the Commission and applicable states of a compliance plan that fully explains the

affiliates operations, including capitalization, transfers of assets, employees, brand names, intangible property, etc.

5) ILECs (or their affiliates, where appropriate) should be obligated to demonstrate compliance with their broadband obligations (including resale, ONA unbundling, UNE provisioning, interconnection, and all imputation requirements), prior to approval of any tariff for advanced wireline services.

While this list is not exhaustive, it illustrates the kind of "institutional tools" that will enable the Commission and the states to address the concerns set out below with minimal consumption of time and resources.

A. Collocation Issues

1. Collocation Equipment

ALTS supports the Advanced Wireline Services Order's proposal that ILECS not be allowed to impose restrictions of any kind on the kind of equipment that can be collocated by a carrier (at ¶ 129). See HAI Broadband Paper at 55. In particular, it makes no sense to continue a six-year old restriction on switching that was imposed in the Expanded Interconnection Order because "This proceeding is intended to remove barriers to competition in the provision of basic transmission services between LEC central offices and third-party premises."[31] Obviously, the subsequent adoption of the 1996 Act has clearly extended the pro-competitive function of collocation beyond the

[31] In the Matter of Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369, 7413 (1992).

simple, though important, goal of furthering competition in transport services.

Technology-neutrality is an additional consideration arguing for removal of equipment restrictions. As the Advanced Wireline Services Order points out, the switching-transport distinction is far less robust in the packet/frame/cell world than it is in circuit switching. Attempting to draw lines between bridges, routers, and packet switches is a pointless task that simply underscores the need to abandon the restriction altogether. Furthermore, even the most well-intentioned line-drawing by the Commission would invite ILECs to act as "phone police," and permit them to quickly reject CLEC equipment as "non-compliant." Indeed, it is hard to see how a line could be drawn between equipment that provides switching and multiplexing, and equipment that provides switching in general.

The Advanced Wireline Services Order is certainly correct that "if an incumbent LEC chooses to establish an advanced services affiliate, the incumbent must allow competitive LECs to collocate equipment to the same extent as the incumbent allows its advanced services affiliate to collocate equipment in order to meet its existing obligation to provide collocation on nondiscriminatory terms and conditions" (at ¶ 129). However, this proposal, while entirely appropriate, does not eliminate the need to remove the current equipment restrictions. Affiliates will have their own business strategies, just like non-affiliated